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8 Attorneys for Defendants
HSBC MORTGAGE CORPORATION (USA) and
9 HSBC BANK USA, N.A.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
15 others similarly situated, and on behalf of
the general public,

16 Plaintiffs,

17 v.

18 HSBC Mortgage Corporation (USA);
19 HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

20 Defendants.
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Case No. C 07 2446 MMC [ECF]

**[PROPOSED] ORDER DENYING
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION,
PRODUCTION OF UPDATED CLASS
LIST, AND PARTIAL SUMMARY
JUDGMENT**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

Complaint Filed: June 29, 2007 (Amended)
Trial Date: Not Yet Set

On February 8, 2008, Plaintiff's Motion for Conditional Certification, for Production of an Updated Class List, and for Partial Summary Judgment came on for hearing at 9:00 a.m. before the Honorable Maxine M. Chesney. Plaintiffs and Defendants were both represented by counsel.

For all the reasons set forth in Defendants' Opposition to Plaintiff's Motion for Conditional Certification, for Production of an Updated Class List, and for Partial Summary Judgment, the supporting documents filed with the Opposition, and the record herein, and based on the arguments of counsel, the Court orders as follows:

1. Plaintiffs' Motion for Conditional Certification is DENIED. The evidence submitted by the parties demonstrates that Plaintiffs have failed to meet their burden of showing that all proposed class members are "similarly situated." The Court finds that the fact-specific analysis inherent to Plaintiffs' misclassification claims under the Fair Labor Standards ("FLSA") require individual judicial review and that the diversity of the proposed class members is not suitable for a collective action. *See, e.g., Brooks v. BellSouth Telecom., Inc.*, 164 F.R.D. 561, 567 (N.D. Ala. 1995). Plaintiffs have not shown sufficient similarity among the proposed class members "which binds the named plaintiffs and the potential class members together as victims of a particular policy or practice" that would "predominate a determination of the merits" in the case. *England v. New Century Financial Corp.*, 370 F. Supp. 2d 504, 508 (M.D. La. 2005); *Mike v. Safeco Ins. Co.*, 274 F. Supp. 2d 216, 220 (D. Conn. 2003); *see also King v. West Corporation*, 2006 U.S. Dist. LEXIS 3926, *16 (D. Neb. 2006).

Alternatively, Plaintiffs' Motion for Conditional Certification is DENIED because Plaintiffs have not made a showing sufficient to demonstrate that Defendant HSBC Mortgage Corporation (USA) had a common policy or plan to violate the FLSA. *See Flores v. Lifeway Foods, Inc.*, 289 F. Supp. 2d 1042, 1046 (N.D. Ill. 2003).

Additionally, because of their failure to meet their burden of proof, all consent forms filed in this action are dismissed, with the exception of those litigants who are or were employed by HMCU in the Northern California region.

2. Because Plaintiffs' Motion for Conditional Certification is denied, the Court is not required to rule on the portion of Plaintiffs' Motion requesting an updated class list.

1 3. Plaintiffs' Motion for Partial Summary Judgment that Defendant HSBC Bank
2 USA, N.A. is a properly named employer of the proposed class members is DENIED. The evidence
3 submitted by the parties demonstrates that Defendant HSBC Mortgage Corporation (USA) is the
4 employer of the proposed class members and that Defendants HSBC Mortgage Corporation (USA)
5 and HSBC Bank USA, N.A. are not an integrated enterprise or a single employer. *See Int'l*
6 *Brotherhood of Teamsters v. American Delivery Svc. Co., Inc.*, 50 F.3d 770, 775 (9th Cir. 1995).

7 4. Plaintiffs' Motion for Partial Summary Judgment that the executive and
8 professional exemptions under the FLSA do not apply to the proposed class members is GRANTED.
9 This Motion was unopposed by Defendants.

10 5. Plaintiffs' Motion for Partial Summary Judgment that the administrative,
11 highly compensated and commissioned sales exemptions under the FLSA do not apply is DENIED.
12 *See* 29 C.F.R. § 541.200(a); DOL Opinion Letter dated Sept. 8, 2006; 29 C.F.R. § 541; 29 U.S.C. §
13 207(i); *see also Gatto v. Mortgage Specialists of Ill., Inc.*, 442 F. Supp. 2d 529, 541-42 (N.D. Ill.
14 2006). The Court finds that triable issues of fact exist as to the applicability of these three
15 exemptions to the proposed class members.

16 **IT IS SO ORDERED.**

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18 Dated: _____, 2008
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21 THE HONORABLE MAXINE M. CHESNEY
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